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Appendix

Supreme Court of the United States

OCTOBER TERM, 1950

No. 695

JOSEPH THOMAS MULLEN,

Petitioner

— v. —

UNITED STATES

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 655

JOSEPH THOMAS MULLOY,

Petitioner,

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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APPENDIX.

RELEVANT DOCKET ENTRIES

Date 1968	
3/11	Indictment returned and filed.
3/18	Motion to dismiss indictment filed in open court.
3/19	Arraignment Order signed by Judge Gordon 3/18/68. Plea of NOT GUILTY entered as to the one count.
	Case set for trial before a Jury on 4/5/68. All Motions will be heard on 3/21/68.
3/21	Motions filed in open court as follows: Motion to Dismiss Indictment and Quash Jury Venire, with Points and Authorities & Affidavit. Motion for Discovery and Inspection; Points and Authorities in Support of Defendant's Motion to Dismiss (additional one).
3/21	Order on hearing held 3/21, signed by Judge Gordon: overruling motion for stay of proceedings and certain parts of discovery motion; others taken under advisement for ruling to issue 3/22 when hearings continued. Cys to US Atty. and Mr. Sedler.
3/25	Order on hearing held 3/22, signed by Judge Gordon 3/22: motion to dismiss and quash jury venire overruled; motions for discovery overruled; Court reaffirms ruling of 3/21 re request for other

Date 1968	
	deferment requests; motion to dismiss re unconstitutionality of SS Act, overruled; case continued to 4/5/68 for trial. Cys to US Atty. and Mr. Sedler.
4/2	ORDER signed by Judge Gordon on Mr. Sedler's motion: overruled as to Item 1, Sustained as to Item 2 and Clerk of Court directed to prepare necessary information; overruled as to Item 3. Cys to Mr. Sedler and US Atty.
4/5	Motion for Judgment of acquittal filed by Mr. Sedler; Jury instructions tendered.
4/5	Verdict returned in open court and filed, reading as follows: "We, the Jury, find the defendant, JOSEPH THOMAS MULLOY, GUILTY as to the first count of the Indictment. April 5, 1968 /s/ Jack Kunnecke, Foreman."
4/8	TRIAL ORDER signed by Judge Gordon 4/8 on trial held 4/5 and reflecting above verdict; Cys to Mr. Sedler and US Atty.
4/10	JUDGMENT & COMMITMENT signed by Judge Gordon dated 4/8; 5 years on the 1 ct and fine of $10,000; defdt to stand committed for fine; advised of all rights regarding appeal.
4/8	Notice of appeal by Joseph Thomas Mulloy to US Court of Appeals for 6th Circuit—filed. Copy mailed to US Attorney.
Date 1969	
6/10	Conviction affirmed by US Court of Appeals for 6th Circuit.
8/29	Petition for rehearing denied by US Court of Appeals for 6th Circuit.

[Opinion of the Court below, reported 412 F.2d 421]

FILED
JUN 10 1969
CARL W. REUSS, Clerk

No. 18709

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
JOSEPH THOMAS MULLOY,
Defendant-Appellant.

APPEAL from United State District Court for the Western District of Kentucky.

Decided June 10, 1969.

Before: WEICK, Chief Judge, CELEBREZZE and McCREE, Circuit Judges.

WEICK, Chief Judge. Appellant Mulloy was convicted in the United States District Court of wilfully refusing to submit to induction into the Armed Forces, in violation of Military Selective Service Act of 1967. 50 U.S.C. App. § 462(a). A sentence of five years' imprisonment and a fine of $10,000 were imposed.

Appellant contends that the grand jury and the petit jury were improperly constituted; that the Universal Training Service Act as amended in 1967 is unconstitutional; and that the Vietnam war is illegal. These same contentions were made in *United States v. Pratt*, — F.2d — (No. 18,710, 6th Cir. 1969), which case was consolidated for argument with this one. For the reasons and upon the authority relied upon in *Pratt*, we reject these contentions.

Appellant further contends that his procedural rights were violated by the refusal of his Local Board to reopen his classification of 1-A (available for military service) which

was granted to him by the Appeal Board. He asserts that this was arbitrary and unreasonable and constituted an abuse of discretion; and that it deprived him of a second administrative appeal and violated his constitutional rights.

Mulloy registered for the draft on June 13, 1962. He filed his Classification Questionnaire (SSS Form 100) on June 17, 1963. He did not at that time request an exemption as a conscientious objector. On November 22, 1963 his Local Board classified him 2-S (college student), which classification remained for four years. After leaving college he was employed by the Appalachian Volunteers, operated by the Office of Economic Opportunity, and was granted a one-year occupational deferment by the Board. Upon expiration of this deferment, he requested another occupational deferment so that he could continue his work with the Volunteers, but the Board on May 17, 1967, in accordance with its policy in such cases to limit deferment to one year, denied his request and classified him 1-A.

On May 17, 1967 Mulloy was ordered to report for a physical examination. On May 19th he wrote a letter appealing to the Board to review and reconsider his request for an occupational deferment. On June 26th he was found qualified at the Armed Forces Examining Station and was notified of his acceptability by Statement of Acceptability (DD Form 62). The Board wrote Mulloy on July 3, 1967, asking whether he wanted it —

> ". . . to first review your file and then forward it to the Appeal Board or simply forward to the Appeal Board only . . . ."

He replied that he —

> ". . . appealed the classification on the grounds of occupation and asked for a renewal of my 2-A deferment. . . . Please do what is necessary to reconsider my classification."

On July 17, 1967 the Board issued an order to Mulloy to report for induction. He then requested that his appeal be forwarded to the Board of Appeal and also asked for a personal appearance. The Board denied his request for personal appearance because the request had not been made within thirty days after classification, as required by the regulation (32 C.F.R. § 1624.1(a)). Although his right to appeal had expired, and because of an apparent misunderstanding, the Board forwarded his file to the Appeal Board and cancelled the order to report for induction. On August 16, 1967 the Appeal Board classified him in 1-A by a 5-0 vote.

On September 5, 1967, the Board received a letter from Mulloy advising that he was under arrest and out on bail charged with sedition for teaching and advocating the violent and forceful overthrow of the United States Government and the State of Kentucky. On September 21, 1967 the Board issued an order to report for induction on October 16, 1967. This was the second induction order. On October 9th the Board received another letter from him advising that he was still under a $5,000-bond in the U.S. 6th District Court and also under a $500-bond to the Pike County Court "on the charge of flourishing a deadly weapon. I request that you cancel that induction order . . . ."

On October 12, 1967 the Board cancelled the second order to report for induction and advised Mulloy by letter of its action. On the day after he was scheduled to report for induction under the cancelled order, he wrote to the Board asking for "A Conscientious Objector Application Form", which was supplied to him. He returned it to the Board with attachment thereto on October 30, 1967. In his letter enclosing the form he stated that his lawyer advised that he was still under bond to the Federal Court in Lexington and "I request a personal interview with my Board to discuss my appalachian."

The Board replied by letter advising him that his appeal rights and personal appearance time had both expired but that

it was granting him a personal appearance through courtesy. 32 C.F.R. § 1625.1(c).

Mulloy appeared at the meeting. The Board received and placed in his file a number of letters in support of his request. The Clerk of the Board prepared a resume of his appearance and placed it in his file. The resume indicates that the Clerk was instructed to write to the Federal Court in Lexington to inquire concerning his appeal and bond. The resume further stated:

> "Until such time as a reply is received, the members would not consider him a C.O."

An entry was made on his Classification Questionnaire on November 9th, stating "Classification was not reopened."

On November 17, 1967, the Board received a letter from Mulloy in which, among other things, he stated:

> "This brings us to the war in Vietnam and my draft situation. I do not question individual integrety [sic] or your right by law to do what you do. I do however believe that every citizen has the duty of dissent, even resistance, regarding acts which violate his conscience
>
> . . . .
>
> "Since I believe my country's course to be wrong in Vietnam, I feel that I would be serving my country's best interests, now and in the future generations, to follow my conscience.
>
> "I feel that you are going to try to draft me anyway, regardless of my feelings. *I have not made up my mind as yet.* If I decided to go into the Army I will of course do everything in my power to teach my fellow soldiers the truth about Vietnam and Non-violent principles. I will actively organize resistance. *If I choose not to go into the Army I will resist induction and make the biggest stink about it possible.* I must do this to bear witness to my beliefs and to cause my fellow citizens to think. . . ." [Italics ours]

By letter dated December 2, 1967, Mulloy advised the Board that he had been "fired" by the Appalachian Volunteers "for stating that I am a C.O. and would refuse induction if ordered"; and that as far as he knew he was still under bond to the Federal Court.

On December 6, a letter from the Clerk of the District Court at Lexington was placed in his file which stated that Mulloy was recently a plaintiff in a civil action filed on the Pikeville Docket, but that the Clerk had "no information of his ever being a defendant in a matter in this court either civil or criminal."

On January 3, 1968, Mulloy wrote to the Board stating that he was now employed by the Southern Conference Educational Fund in Louisville and was working on a book "about my experience with the Poverty War in Appalachia"; and that the sedition charges had been dropped and the bond released. He was not sure about the Pike County peace bond.

On January 19, 1968, he was advised by letter from the Board that his file had been reviewed at its meeting held on January 11th, and that the members felt that the information in his file did not warrant a reopening of his classification. On January 21, Mulloy wrote to the Board appealing from the Board's failure to reclassify him 1-O. He stated that he considered the November interview a reopening of his case. The Board wrote in reply two days later that it did not consider the courtesy appearance as a reopening of his case since his time for appeal and personal appearance had expired. He was ordered to report for induction on February 23, 1968, but refused to submit.

Selective Service Regulation 32 C.F.R. § 1625.2, entitled "When Registrant's Classification May Be Reopened And Considered Anew," provides in part that the Local Board may reopen and consider anew the registrant's classification upon written request of the registrant —

> ". . . if such request is accompanied by written information presenting facts not considered when the registrant

was classified, which, if true, would justify a change in the registrant's classification."

Selective Service Regulation 32 C.F.R. § 1625.4, entitled "Refusal to Reopen And Consider Anew Registrant's Classification," provides in part:

". . . [E]ven if new facts are presented, [when] the Local Board is of the opinion that such facts, if true, would not justify a change in such registrant's classification, it shall not reopen the registrant's classification."

Under Regulation 1625.2 the Board has discretion to determine whether or not it will reopen a classification, but Regulation 1625.4 appears to be mandatory in that the Board *shall not* reopen the classification when it is of the opinion that the facts, if true, do not justify a change in the classification.

In *Smith* v. *United States*, 157 F.2d 176 (4th Cir. 1946) Judge Soper, who wrote the opinion for the Court, said:

"Whether or not the additional evidence was of sufficient weight to require a reopening of the case lay within the discretion of the board and it cannot be said under the circumstances that the discretion was arbitrarily exercised." *Id.* at 181.

Smith was followed by the Seventh Circuit in *United States* v. *Bartelt*, 200 F.2d 385, 389 (7th Cir. 1952).

Mulloy contends that in determining whether to reopen the classification the Board was limited to consideration of only the Special Form For Conscientious Objector (SSS Form 150). In our judgment, the Board had not only the right but also the duty to consider not only the form but also the attachment thereto, the letters received in connection therewith and the entire file. This is implicit in the holdings of the Second Circuit in the two *Gearey* cases. *United States* v. *Gearey*, 368 F.2d 144 (2nd Cir. 1966); *United States* v. *Gearey*, 379 F.2d 915 (2d Cir. 1967).

In *Gearey*, the Board considered on the merits the request to reopen a classification after an order to report for induction, and the Court held that there was a rational basis for the Board's determination that the registrant was not a genuine conscientious objector and the Board therefore was not required to reopen his classification.

Appellant's contention, if upheld, would result in interminable delays in proceedings before Local Boards and indeed might frustrate the operation of the Selective Service System.

> "As the Tenth Circuit has pointed out, religious 'conversions' of convenience might well upset the orderly administration of the selective service system." *United States* v. *Taylor*, 351 F.2d 228, 230 (6th Cir. 1965).

Under Mulloy's contention, all a registrant needs to do is to state facts in support of his application and the Board is limited to his statement. In our judgment, the facts stated must be true and the Board has the power to investigate and determine the truth. Suppose a registrant who is classified 1-A requests the Board to reopen his classification and place him in 3-A, alleging that he is living with and supporting his wife and family. If appellant's allegations were true, the Board would be obligated to reopen his classification and reclassify him. *Townsend* v. *Zimmerman*, 237 F.2d 376 (6th Cir. 1956). However, the Board, under the investigative powers granted to it in 32 C.F.R. § 1625.1(c), may learn that the allegation was false. Is the Board nevertheless required to reopen his classification and reclassify him? We say, "No."

The Military Selective Service Act of 1967 omitted the provision contained in the 1940 Act for referral to the Department of Justice of conscientious objectors' claims, including the provision for appeal to the Appeal Board of Local Board action denying conscientious objector classification.

The legislative history of the statute indicates Congressional concern for "unusually long and unnecessary delay in processing

cases in the Department of Justice." H.R. No. 267, 90th Cong., 1st Sess. 1308, 1333-34 (1967). Congress was also of the belief that the decision of the Supreme Court in *United States* v. *Seeger*, 380 U.S. 163 (1965), had broadened the basis on which conscientious objection could be made, and resulted in an increase of administrative appeals and delays. The definition was changed so that conscientious objection must be based solely on religious training and belief, not including "essentially political, sociological, or philosophical views, or a merely personal moral code." 50 U.S.C.App. § 456(j).

Mulloy's letter dated November 17, 1967, from which we have quoted, indicated rather clearly that his objection to serving in the Armed Forces was based on essentially political, sociological or philosophical views and his conscience rather than on religious training and belief. He even indicated at that late date that he had not made up his mind as to whether he would go into the army. The letters which he wrote to the Board revealed that he was principally interested in an occupational deferment.

Furthermore, the Board had the right to consider inconsistent statements made by the registrant as well as any fact which cast doubt on his veracity. *Witmer* v. *United States*, 348 U.S. 375 (1955).

The Chairman of the Local Board testified in Court that the Board's decision was based on all information available, including the file and what he said. He further testified that Mulloy's claim for deferment was based principally upon his job. He testified:

> "His claim, taking everything, assuming everything he said down there at that time to be so, he still did not make out a case for conscientious objection and, therefore, we saw no reason to reopen the case, because it wasn't there."

The Act provides that classification orders of the Board shall be final. 50 U.S.C.App. § 460(b)(3). The Courts have

limited the scope of judicial review to a determination of whether there is basis in fact for the classification. *United States* v. *Seeger, supra; Dickinson* v. *United States,* 346 U.S. 389 (1953); *Estep* v. *United States,* 327 U.S. 114 (1946); *United States* v. *Jackson,* — F.2d — (No. 18,645, 6th Cir. March 24, 1969); *United States* v. *Beatty,* 350 F.2d 287 (6th Cir. 1965); *cert. denied,* 382 U.S. 1028. Mulloy relies upon *Miller* v. *United States,* 388 F.2d 973 (9th Cir. 1967) and *Freeman* v. *United States,* 388 F.2d 246 (7th Cir. 1967), which cases were decided under the 1940 Act and involved different facts. We regard the cases as inapposite.

In considering whether to reopen the classification, the Board had the right to take into account the original questionnaire filed by appellant in June, 1963. In Series VIII of that form under the heading of Conscientious Objector he printed: "Does Not Apply." Since his registration in 1962 he had been granted five years' deferments for college and occupation, an appeal before the Appeal Board, the cancellation of two orders to report for induction, and then when time was running out for him, he claimed for the first time on October 30, 1967, that he was a conscientious objector. Even then he was still maintaining that he should be classified in 2-A because of his work in Appalachia, and he had not made up his mind as to whether he would go into the army.

A letter written to the Board by his brother, Robert, while disagreeing with Mulloy's position, stated:

> "I believe my brother to be sincere concerning his feelings and he has maintained this position for a number of years."

If this were true, why did he wait so long to inform the Board?

It would further appear that what he wrote to the Board about being under a $5,000-bond in the Federal Court was not correct.

We are of the opinion that there was a rational basis for the Board's determination that Mulloy had not established a case of conscientious objection, and that the Board did not abuse its discretion in denying his request to reopen his classification. In our judgment, he did not make out a prima facie case of conscientious objection, and the additional information that he supplied did not justify a change in his classification. *United States* v. *Jackson, supra.* His claim to conscientious objection did not fool the Board nor the District Judge who, in sentencing him, said:

> "It is the observation of this court that in the trial of this matter you have worn out pretty well the claim of conscientious objector, which I think the record should reflect you did not assert for many, many months.[1]
>
> "In other words, in my judgment, you have suffered an instant conversion when you realized that the platoon sergeant was about to blow his whistle."

In our judgment, the courtesy hearing granted did not constitute a reopening of the classification. Other claims of error have been considered and are insufficient to warrant reversal.

The sentence of the court would appear to us to be rather severe. We do not have before us the presentence investigation which may have justified it. The District Court will have an opportunity to consider reduction of the sentence if request is made under Rule 35 of the Federal Rules of Criminal Procedure.

Affirmed.

---

[1] It was about four years.

McCREE, Circuit Judge, concurring. I concur in the result. Selective Service Regulation 32 C.F.R. § 1625.2 vests broad discretion in the Local Board, and since the Board was justified in considering the entire file (instead of being confined solely to appellant's conscientious objector application), I do not regard the decision not to reopen appellant's file as an abuse of that discretion. Accordingly, I find it unnecessary to consider the philosophical contours of conscientious objection in this appeal. I agree with the majority's statement questioning the propriety of imposing the maximum possible sentence in this case.

[Excerpt from Petitioner's Selective Service File: SSS Form 100]

SSS Form 100

SELECTIVE SERVICE SYSTEM
MINUTES OF ACTION—CONTINUATION SHEET

(Approval not required.)

NAME OF REGISTRANT OR STANDBY RESERVIST	SS OR IN NUMBER			
Mulloy, Joseph Thomas	15	47	44	153

Date	Minutes of Action	Vote Yes	Vote No
7-25-67	Order for Induction for Aug. 17, 1967 cancelled. Members	3	0
	permitted file to be forwarded to Appeal Board, even though		
	period of appeal had expired.		
7-25-67	File forwarde to Appeal Board		
8-24-67	Filed returned from appeal Board. Class. 1A by vote 3-0		
8-28-67	mailed SSS 110 (notice of class.) & SSS 111 (class. advice)		
	to Mr. Thomas Rhodenbaugh, Bristol, Tenn.		
8/21/67	Mailed SSS 252, Order to Report for Ind., o. 10/16/67,		
10/12/67	SSS 127, DD 398 & instr., & DA Form 41.		
10-20-67	Order to report for induction on 10/16/67 cancelled.		
	mailed SSS 190 (Spec. Form for C. O.)		
10/30/67	Registrant returned completed SSS Form 150. Also received		
	letter requesting personal appearance.		
11/9/67	Registrant was granted a "courtesy personal appearance",		
	classification was not re-opened. Board is to obtain		
	additional information regarding appeal and bond.		
1-11-68	All information in file was considered including claim	4	0
	of Conscientious Objector. All Members present felt th is		
	information did not warrant re-opening of 1A class.		
1-23-68	mailed SSS-252 (Ord. to rep. for Ind.Feb.23,1968) DD F 398		
	and Instr., Ky. Bar pamphlet, and SSS F 127		
2-27-68	papers returned from examining station. SSS 261 (Delivery		
	List) shows Refused Induction.		

[Excerpt from Petitioner's Selective Service File: SSS Form 150]

Form approved.
Budget Bureau No. 33-R311.2

SELECTIVE SERVICE SYSTEM

SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR

Selective Service
Local Board No. 47
Room 106, VA Building
1405 W. Broadway
Louisville, Ky. 40203

(Local Board Stamp)

THIS FORM MUST BE RETURNED ON OR BEFORE
Oct. 30, 1967
(Ten days after mailed or issued)

Date of mailing or issuance Oct. 20, 1967

Date received back at local board .....

1. Name of Registrant			2. Selective Service No.
Mulloy (Last)	Joseph (First)	T. (Middle)	15 47 44 153

3. Mailing address: Rt. 2 Box 928 (Number and street or R.F.D. route) Pikeville, (City, town, or village) (County) Kentucky (State) (ZIP Code)

INSTRUCTIONS

A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on this special form, which when filed shall become a part of his Classification Questionnaire (SSS Form 100).

The items in Series II through V in this form are intended to obtain evidence of the genuineness of the claim made in Series I, and the answers given by the registrant shall be for the information of only the officials duly authorized under the regulations to examine them.

In the case of any registrant who claims to be a conscientious objector, the local board shall proceed in the prescribed manner to determine his proper classification. The procedure for appeal from a decision of the local board on a claim of conscientious objection is provided for in the Selective Service Regulations.

Failure by the registrant to file this special form on or before the date indicated above may be regarded as a waiver by the registrant of his claim as a conscientious objector; *Provided*, that the local board, in its discretion, and for good cause shown by the registrant, may grant a reasonable extension of time for filing this special form.

Series I.—CLAIM FOR EXEMPTION

INSTRUCTIONS.—The registrant must sign his name to either statement A or statement B in this series but not to both of them. The registrant should strike out the statement in this series which he does not sign.

(A) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I, therefore, claim exemption from combatant training and service in the Armed Forces.

(Signature of registrant)

(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training and service in the Armed Forces. I, therefore, claim exemption from both combatant and noncombatant training and service in the Armed Forces.

Or

(Signature of registrant)

Under the provisions of section 6 (j) of the Universal Military Training and Service Act, as amended, any person who claims exemption from combatant training and service in the Armed Forces of the United States because he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and such claim is sustained by the local board, shall, if he is inducted into the Armed Forces, be assigned to noncombatant service as defined by the President, or shall, if found to be conscientiously opposed to participation in such noncombatant service, in lieu of induction, be ordered by his local board, subject to regulations prescribed by the President, to perform for a period of twenty-four consecutive months such civilian work contributing to the maintenance of the national health, safety, or interest as the local board deems appropriate, and any such person who fails or neglects to obey such order of the local board shall be subject to imprisonment for not more than five years or a fine of not more than $10,000, or to both such fine and imprisonment.

Series II.—RELIGIOUS TRAINING AND BELIEF

INSTRUCTIONS.—Every item in this series must be completed. If more space is needed use extra sheets of paper.

1. Do you believe in a Supreme Being? ☒ Yes ☐ No

2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief is a belief in a Supreme Being involves duties which to you are superior to those arising from any human relation.

See appendix

SSS Forms 150 (Revised 2-1-55). (The printing of 1-31-52 shall be used until exhausted.)

3. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

See appendix

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

See appendix

5. Under what circumstances, if any, do you believe in the use of force?

See Appendix

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

See appendix

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

See appendix

Series III.—GENERAL BACKGROUND

INSTRUCTIONS.—Every item in this series must be completed. If more space is needed use extra sheets of paper.

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (public, church, military, commercial, etc.).

Name of School	Type of School	Location of School	Dates Attended: From—	To—
See Appendix			19	19
			19	19
			19	19
			19	19

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged.

Type of Work	Name of Employer	Address of Employer	Period Worked: From—	To—
See Appendix			19	19
			19	19
			19	19
			19	19
			19	19
			19	19

3. Give all addresses and dates of residence where you have formerly lived.

Name or City, Town, or Village	State or Foreign Country	Number, Address or R. F. D. Route	Dates of Residence From—	To—
See Appendix			19	19
			19	19
			19	19
			19	19
			19	19
			19	19

4. Give the name and address of your parents and indicate whether they are living or not.

Mr. and Mrs. Joseph P. Mulloy; Living

5. (a) State the religious denomination or sect of your father Catholic

(b) State the religious denomination or sect of your mother Catholic

Series IV.—PARTICIPATION IN ORGANIZATIONS

INSTRUCTIONS.—Every item in this series must be completed. If more space is needed use extra sheets of paper.

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.

No.

2. Are you a member of a religious sect or organization? ☒ Yes ☐ No. If your reply to item 2 is "yes," complete items (a) through (e).

(a) State the name of the sect, and the name and location of its governing body or head if known to you.

Roman Catholic Church Pope Paul Rome, Italy

(b) When, where, and how did you become a member of said sect or organization?

In June of 1944 at Baptism

(c) State the name and location of the church, congregation, or meeting where you customarily attend.

Due to the fact that I travel a lot and there are few Catholic Churches nearby I cannot maintain regular attendence. I am spiritually cared for at St. Anthony Church, Norton, Va.

(d) Give the name, title, and present address of the pastor or leader of said church, congregation, or meeting.

Fr. William Browne, St. Anthony Church, Norton, Va.

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

Pope Paul said before the UN "No more war, no never again. If you wish to be brothers let the weapons fall from your hands."

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than military, social, or labor organizations.

I am working to improve the lot of the poor with the following organizations: VISTA, the OEO, the Highlander Education Center, the Council of Southern Mtns., the Appalachian Volunteers, numberous community action programs, the Southern Conference Educational Fund, The Southern Student Organizing Committee, The Appalachian Group to Save the Land and People, the Marrowbone Flok School, JOIN in Chicago, the Glenmary Southern Project, and many more.

Series V.—REFERENCES

INSTRUCTIONS.—This series must be completed. If more space is needed use extra sheets of paper.

Give here the names and other information indicated concerning persons who could supply information as to the sincerity of your professed convictions against participation in war.

NAME	FULL ADDRESS	OCCUPATION OR POSITION	RELATIONSHIP TO YOU
Fr. William Browne	St. Anthony Chur. Norton	Va. Priest	friend
Thorsten Horton	PO Box 2533 Pikeville,Ky	Teacher	friend
Carl Braden	3210 W. Broadway, Lou,Ky	Organizer	friend
Mrs. J. P. Mulloy	229 N. 37, Louisville,Ky	Housewife	mother

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—Every registrant claiming to be a conscientious objector shall make this certificate. If the registrant cannot read, the items and his replies thereto shall be read to him by the person who assists him in completing this form. If the registrant is unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons who shall sign as witnesses.

NOTICE.—Imprisonment for not more than five years or a fine of not more than $10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Universal Military Training and Service Act, as amended).

I, Joseph T. Mulloy, certify that I am the registrant named and described in the foregoing statements in this form; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing are (are, are not) in my own handwriting.

Registrant sign here

(Signature or mark of registrant)

(Signature of witness to mark of registrant)

Oct. 26, 1967
(Date)

(Date)

(Signature of witness to mark of registrant)

(Date)

If another person has assisted the registrant in completing this form, such person shall sign the following statement:

I have assisted the registrant herein named in completing this form because

(For example—registrant unable to read and write English, etc.)

(Signature of person who has assisted)

(Occupation of person who has assisted)

(Address of person who has assisted)

(Date)

U.S. GOVERNMENT PRINTING OFFICE 1951—O 770-920

APPENDIX TO SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR

SERIES II – RELIGIOUS TRAINING AND BELIEF

2 My religious training taught me that it is against God's law to kill. To be a member of the Armed Services of this country or any other would oblige me to either kill or indirectly assist in killing. I also believe that the message of Jesus is love for all mankind. We as his children are to imitate Jesus' love for men.

Yes, my belief in a Supreme Being does involve duties to which I am superior to those arising from human relation.

3 I was born to Catholic parents on June 1, 1944, and was baptized into the Catholic Church shortly thereafter. I attended St. Anthony and St. Columbia grade schools in Louisville. I studied the Bible and the meaning of various stories and parables such as the prodigal son and parable of the vinyard. I learned the catechism, the sacraments, the Ten Commandments, and the life of Jesus. In short, I learned the basic rudiments of Christian teachings. In the sixth grade I became an alter boy and assisted the priests at Mass regularly. I even once served the Archbishop in an Easter observance.

Missionary orders such as the Glenmary and the Maryknoll used to visit my class often in the eighth grade to tell us of their work. I was inspired by them and decided to become a priest. However, by high school time I was not sure and decided to wait. I was a young lad,

knowledgeable in the teachings of Christ but still ignorant as to their real meaning or significance. I needed more experience.

I entered Flaget High in 1958. The Xaverian Brothers were quite a change from the Nuns. We concentrated not on rote memorization but on understanding the laws and mysteries of the Church. God's love for man was a constant theme.

The motto of Bellarmine College is "In the search of truth." By the time I enrolled in the school I had begun my own search for truth. I began to doubt and I fancied myself an agnostic, then an atheist. I was rebelling and I went through an extremely hard religious crisis. This religious crisis coupled with several failures in my personal life and the sudden illness of my father caused me to despair. I attempted suicide.

During my recovery I began to read and grow again. I reenrolled in college and came back to the Church. I discovered Thomas Merton in a Monastery near Bardstown. Through his writings and poems he quickly became my mentor and spiritual advisor. I devoured everything that he wrote and found a great similarity between our lives and thoughts. An internal struggle was being waged inside of me again. I felt I was being pulled to the monastic life. Merton had chosen the life of prayer, the life of solitude. He was the outstanding example that the materials of this world were meaningless. He said that man must conquer himself before he could know fulfillment. Merton was non-violent. He was a hermit. He was "drunk with God."

I was attracted and deeply influenced. Many times I went to the Monastery to gaze at the gray walls, to walk in the garden and to be near the men who live but for God.

About this same time, 1965, I became involved with the Appalachian Volunteers. I jumped into this work with missionary zeal, determined to right the injustices. I was an organizer. Imbued with a sense of history and determined that I was right I threw myself into my work.

I found that this was the point that Merton and I differed on. He was a contemplative. He found his way to God in solitude and prayer. But I was an activist, a worker in the world. I found my solace and comfort in people. This was my path.

As I have tried to show my religious training has taught me basic laws of God. Love of God in every man is the supreme goal.

As I grew and participated in the world I was able to determine a priority on the things I learned as a child. Thus I place love of my fellow man above regular church attendance. And I place Thou Shalt Not Kill above An Eye For An Eye. I learned rapidly in my work in the southern Highlands of the significance of love and understanding and the futility of violence and force. Too many poor people have been used and walked on by the power hungry courthouse gangs. There is an urgent need for the poor to become organized and the rich to be educated. This must be done in a non-violent way.

Violence only breeds violence.

As a young man I was not taught to be against the use of violence as such. But I was taught not to kill and to love all men. This coupled with my adult experience has brought me to my present position. It was only through and after my adult experience that I became a CO.

4 Thomas Merton, Gethsthemini, Ky., Jesus Christ.

5 I believe in the force of non-violence.

6 I am spending my life non-violently working among the poor. When I helped organize Jink Ray's resistance to strip mining I urged non-violent methods. I was successful and bloodshed was averted in a very tense situation. I have supported peace demonstrations to end the war in Vietnam. I have written letters to my Senators and signed a petition to President Johnson urging a negotiated peace in Vietnam.

7 I have trained many groups of VISTA volunteers for work in Appalachian communities. I had several occasions to tell such groups that non-violent change was what was needed in East Kentucky. I led discussions on non-violent organizing techniques. I have talked and expressed my views on this subject privately many times to my wife and friends. And I stated under oath in the U.S. 6th District Federal Court in Lexington in September of this year that I did not advocate the violent overthrow of any government. I stated I believe in the peaceful means provided for in the Constitution and the democratic process.

APPENDIX TO SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR

SERIES III-- GENERAL BACKGROUND

1.

School	Type	Location	Dates
St. Anthony	Church	Louisville,Ky.	1950-51
St. Columbia	Church	Louisville,Ky.	1951-58
Flaget High	Church	Louisville,Ky.	1958-62
Bellarmine College	Church	Louisville,Ky.	1962-63
U of Louisville	Public	Louisville,Ky.	1963-64
U of Kentucky	Public	Lexington, Ky.	1964-65
U of Louisville	Public	Louisville,Ky.	1965-66

2.

Work	Employer	Address	Dates
Organizer	Council of Southern Mts.	Berea,Ky.	Jan-June,'66
Organizer	Appalachian Volunteers	Bristol,Te.	June '66-Now
Teacher	Highlander Education Cen	Knoxville	1966-Now

3.

Town	State	Address	Dates
Pikeville	Ky.	Box 928,Rt. 2	Mar. 67-present
Wise	Va.	Box 151 Rt. 1	Nov 66-Mar 67
Norton	Va.	1522 Main Ave.	Jul 66-Nov 66
Bristol	Tenn.	102 19th St.	May 66-Jul 66
Berea	Ky.	102 Boone St.	Jan 66-May 66
Louisville	Ky.	229 N. 37 St.	until Jan 66

[Letter from Joseph Thomas Mulloy to Local Board Dated February 23, 1966]

February 23, 1966

Local Board No. 47
Room 106—1405 W. Broadway
Jefferson County
Louisville, Kentucky
40203

2-24-66

Dear Sir:

I am writing to inform you of my change of address and occupation. My mailing address is COP 2307, Appalachian Volunteers, Berea, Kentucky, where I am Assistant Director of Field Operations.

I have asked Mr. Loyal Jones, Associate Director of The Council Of The Southern Mountains to write you concerning my draft status and requesting an occupational deferment. I sincerely hope that this request will be honored since I feel that my work is in the National interest.

That you for your consideration, I am,

Sincerely,

(s) Joseph Mulloy
Joseph Mulloy
Assistant Director of Field Operations.
15-47-44-153

JM/cjc

[Letter from Joseph Thomas Mulloy to Local Board Dated March 1, 1967]

(Stamped)
Local Board No. 47
Jefferson County
MAR 1 1967
Louisville, Ky. 40203

Joseph T. Mulloy
Box 122 Rt. 1
Wise, Va.
15-47-44-153

Selective Service
Local Board No. 47
Clerk M. Green

Gentlemen:

This is to inform you of my current address and occupation. Also my 2-A draft deferment runs out in March and I am seeking its renewal. I am still employed, as I was last year when granted a deferment, by the Appalachian Volunteers. Although the AV's are no longer connected with its parent organization, the Council of the Southern Mountains, it is a non-profit incorporated organization involved in the same kind of activity. That activity being developing low income communities and low income people into meaningful participation in American society. We are funded about 95% by the Office of Economic Opportunity (OEO) in Washington and are classified by them as a bona fide Community Action Program (CAP). We have field offices in Kentucky, West Virginia, and Virginia and have 42 VISTA workers under our supervision. The main office for the Appalachian Volunteers, Inc., is 511 Melrose Street, Bristol, Tenn. The director of the program and my immediate supervisor is Mr. Milton Ogle.

I am working right now in Wise County Virginia. I have seven (7) VISTA workers assigned to me and my job

title is that of Fieldman. We are right now preparing for a summer volunteer project involving up to 500 volunteers. The volunteers will be both college students from outside the area and indigenous local people.

I feel that the AV's are different from most social welfare agencies in that we are not concerned with doing FOR people. We, rather, concentrate on people doing for themselves with us supplying the confidence, advice, or initial push. This is the only way in which the area can be improved. For the people to improve it themselves. This also helps to check the unfortunate trend towards handouts and doles which do nothing but perpetuate the situation.

It is for the above reasons that I feel that my work in the mountains is in the National interest. Appalachia is a blight on the face of our society and its problems affect the entire country. I ask that you give your every consideration to renewing my 2-A status.

Thank you.

Sincerely,

(s) Joseph Mulloy
Joseph Mulloy

P.S. I am planning to be married on the 25th of March, 1967. I will forward to you a copy of my marriage license for your files.

[Letter from Appalachian Volunteers to Local Board Dated March 4, 1967]

APPALACHIAN VOLUNTEERS, INC.
Phone 615-968-2127
P. O. Box 3269 Bristol, Tennessee 37620

(Stamped)
Local Board No. 47
Jefferson County
MAR 6 1967
Louisville, Ky. 40203

March 4, 1967

Selective Service System
Local Board No. 47
Room 106
VA Building
1405 West Broadway
Louisville, Kentucky

Re: Joseph T. Mulloy
Selective Service No. 15-47-44-153 2A

Sirs:

This letter is to inform you that Mr. Mulloy is employed by Appalachian Volunteers, Inc., as a field man in Wise County, Virginia, and Pike County, Kentucky.

Mr. Mulloy is in charge of a staff which is working to develop training programs, job opportunities, and better educational opportunities for many of the poor citizens in his area. Mr. Mulloy supervises a staff of seven VISTA Volunteers as part of the national War on Poverty.

To lose the services of Mr. Mulloy at this time would be a serious blow to our program and to the hopes and aspirations which he has aroused in the people of his area. We feel it is in the national interest that Mr. Mulloy be allowed to continue his vital role in the region. If we may be of

further assistance to you in this matter, do not hesitate to call upon us.

Sincerely yours,

(s)Milton Ogle
Director

1b

[Letter from Joseph Thomas Mulloy to Appeal Board Dated May 19, 1967]

(Stamped)
Local Board No. 47
Jefferson County
MAY 23 1967
Louisville, Ky. 40203

May 19, 1967
Box 92 8 Rt. 2
Pikeville, Ky.

Appeals Board
Selective Service
Local Board No. 47
1405 W. Broadway
Louisville, Ky.

Re: Joseph Mulloy
15-47-44-153

Dear Sirs:

On May 16, 1967, I received my notice of classification of 1A from my local Board No. 47. This letter is an official appeal to you to review and reconsider my request for an occupational deferment.

In March of 1966 I received a classification of 2A for my work in the mountains of Eastern Kentucky for the Appalachian Volunteers, Inc. Today I am more deeply than ever involved in working with the rural poor and feel that at least one more year is needed to acheive satisfactory results.

I hope that you will give this matter serious consideration.

Sincerely,

(s) Joseph Mulloy
Joseph Mulloy
15-47-44-153

P.S. I was married on the 25th day of March and have since moved to the new above address.

[Letter from Local Board to Joseph Thomas Mulloy
Dated July 3, 1967]

July 3, 1967

Mr. Joseph Thomas Mulloy
Rt. 2 Box 356 M
Pikeville, Ky.

Dear Mr. Mulloy:

This Board has not overlooked your letter of May 23, 1967. It is Selective Service Regulations that a file cannot be forwarded to the Appeal Board until after the Appeal period has lapsed. I was then away for 2 weeks and due to the amount of work, I am now just getting to your letter.

Do you mean that you want the Board to first review your file and then forward to the Appeal Board or simply to forward to the Appeal Board only?

A Board meeting is planned for this month, but the date has not yet been set.

Yours truly,

Local Board 47

(Miss) M. Green
Clerk

[Letter from Joseph Thomas Mulloy to Local Board Dated July 10, 1967]

(Stamped)
Local Board No. 47
Jefferson County
JUL 12 1967
Louisville, Ky. 40203

44-153
Joseph Mulloy
July 10, 1967

Dear Miss Green,

On May 18, 1967, my board reclassified me as 1-A. I xxxxx appealed that classification on the grounds of occupation and asked for a renewal of my 2-A deferment.

I do not understand fully the proceeds you suggested. Please do what is necessary to reconsider my classification.

Thank you,

(s) Joseph Mulloy

Box 928
Rt. 2
Pikeville, Ky.

[Letter from Joseph Thomas Mulloy to State Director Dated July 20, 1967]

(Stamped)
Local Board No. 47
Jefferson County
JUL 21 1967
Louisville, Ky. 40203

July 20, 1967

Taylor L. Davidson
State Division of Selective Service
Frankfort, Ky.

Dear Sir:

I am writing to request your intercession to correct a procedural error of my local Board.

In March of 1966 I received a 2-A occupational deferment from my local board. I was employed by the Appalachian Volunteers.

In March of 1967 as my one year deferment ran out both I and my employer, Appalachian Volunteers, wrote my local board requesting a renewal of my 2-A occupational deferment.

On May 16, 1967, I was reclassified 1-A by my local board.

On May 17, 1967, I was ordered to appear for a physical examination on June 26 in Louisville.

On May 23, 1967, I appealed in writing this classification to my local Board, again asking for a 2-A deferment.

On June 26, 1967, I appeared for my physical exam and was subsequently notified that I had passed.

On July 3, 1967, my local board wrote me stating that they had been on vacation and were just getting to my written appeal. They also stated that they did not understand if I wanted the local board to review my file and send it to the Appeal Board or to send it directly to the Appeal Board.

A few days later I wrote my local board stating I did not know the procedural differences in their question. I stated again that I was appealing my classification, wished to be reclassified 2-A, and to take my appeal through the proper channels.

On July 17, 1967, I was ordered to report for Induction into the armed services on August 17, 1967.

On July 20, 1967, I telephone my local board and asked the Clerk what was going on. She replied that the local board was meeting today and that they would take up the matter of my appeal and my induction.

On July 20, 1967, upon advice of counsel I am writing for your assistance. I have also requested that my employer write another letter to my local board.

I have been advised that my induction order is invalid since I had made timely appeal and this had not been considered by the Appeal Board. Please have it canceled.

I am now requesting action upon my appeal of May 23, 1967, and a personal appearance before my local board.

Sincerely,

(s) Joseph Mulloy
Joseph Mulloy
15-47-44-153
Box 928 Rt. 2
Pikeville, Ky.

cc. Local Board No. 47
1405 W. Broadway
Louisville, Ky.

John Reints
Central Committee for C O
Philadelphia, Penn.

[Letter from Joseph Thomas Mulloy to Local Board Dated July 20, 1967]

(Stamped)
Local Board No. 47
Jefferson County
JUL 21 1967
Louisville, Ky. 40203

July 20, 1967

Selective Service
Local Board No. 47
Louisville, Ky.

Dear Sir:

Upon advice of counsel I understand that my order for Induction issued on July 17, 1967, is invalid, since I have had a timely appeal outstanding as of May 23, 1967.

The issuence of this Induction order deprives me of my legal appeal rights. Please cancel this Induction order.

I now again request that my appeal be forwarded to the Appeals Board and ask that you grant to me a personal appearance as soon as possible.

Sincerely,
(s)Joseph Mulloy
Joseph Mulloy
15-47-44-153
Box 928 Rt. 2
Pikeville, Ky.

cc. Taylor L. Davidson
State Division of Selective Service
John Reints
Central Committee for CO
Philadelphia, Penn.

[Letter from Appalachian Volunteers to Local Board Dated July 20, 1967]

APPALACHIAN VOLUNTEERS, INC.
P.O. Box 3269 Telephone 615-968-2127
Bristol, Tennessee 37620

(Stamped)
Local Board No. 47
Jefferson County
JUL 24 1967
Louisville, Ky. 40203

July 20, 1967

Selective Service Board Number 47
Room, 107, VA Building
1405 W. Broadway
Louisville, Kentucky 40203

Re: Joseph T. Mulloy
Route # 2, Box 128
Pikeville, Kentucky
Selective Service No. 15-47-44-153

Dear Sirs:

Mr. Joseph Mulloy, a Field Coordinator with our program, has notified us that he is to be inducted into the

Armed Services on August 17, 1967. It is my understanding that Mr. Mulloy has an appeal pending with the State Appeals Board and, therefore, I am asking you if the induction notice was an oversight on your part.

Mr. Mulloy has worked with our program during the past year and a half. The work which he is doing is of vital importance to the Appalachian Volunteers program, but more important, to the people in Pike County with whom he works. Mr. Mulloy's dedication and service would make his replacement difficult.

I hope that every attempt will be made to hear Mr. Mulloy's plea. His loss at this time would seriously disrupt our programs in Pike County.

Sincerely yours,

(s) Thomas Rhodenbaugh
Thomas Rhodenbaugh
Director of Field Operations

TR:jch

cc: Taylor L. Davidson, State Director of Selective Service
John Reints, Central Committee for Conscientious Objectors Joseph T. Mulloy

[Letter from Local Board to Joseph Thomas Mulloy Dated July 25, 1967]

July 25, 1967

Mr. Joseph Thomas Mulloy
Rt. 2 Box 356-M
Pikeville, Ky.

Dear Mr. Mulloy:

The Board Meeting was held this date, July 25, 1967 and not on July 20, 1967. The Board Members concurred

that your Order for Induction for August 17, 1967 be cancelled. You are not to report for Induction.

Your file is being forwarded to the Appeal Board this date. The Members granted this even though the Appeal period was up.

The Members had requested that I present your file to them at a Board meeting, since there was a question as to whether you meant that you were appealing for the Members to review your file or whether you meant you wished your file to be forwarded to the Appeal Board.

The issuance of the Induction Order was not an oversight. When I talked with the Members they stated for me to issue the Order, so that there would be no question of your being skipped over.

Yours truly,

Local Board 47

(Miss) M. Green
Clerk

Copy Thomas Rhodenbaugh
Appalachian Volunteers, Inc.
Bristol, Tennessee

[Letter from Joseph Thomas Mulloy to Local Board Dated September 2, 1967]

(Stamped)
Local Board No. 47
Jefferson County
SEP 5 1967
Louisville, Ky. 40203

HOLIDAY INN OF CINCINNATI-NORTH
Millcreek Expressway (North Int. 75-U.S. 25)
At Sharon Rd. Exit
Cincinnati, Ohio 45241

Box 928 Rt. 2
Pikeville, Ky.
Sept 2, 1967

Selective Service
Local Board # 47
Louisville, Ky.

This is to inform you that I am under arrest and out on bail charged with sedition. I was arrested on Aug. 12, 1967, by Pike Co. officials and charged with teaching and advocating the violent and forceful overthrow of the U. S. Government and State of Ky. The case is now pending in the 6th U. S. Federal District Court in Lexington, Ky.

I will, of course, keep you informed as to further developments.

Sincerely,

(s) Joseph Mulloy
15-47-44-153

[Letter from Joseph Thomas Mulloy to Local Board Received October 9, 1967]

(Stamped)
Local Board No. 47
Jefferson County
OCT 9 1967
Louisville, Ky. 40203

Box 926 Rt. 2
Pikeville, Ky.

Joseph Mulloy
15-47-44-153

Selective Service
Local Board No. 47
1405 W. Broadway
Louisville, Ky.

Dear Sir,

I am sure that you are aware of my present situation, both from my letter to you and from the newspaper reports. My legal complications are by no way solved since I am still under $5,000 bond to the US 6th District Court. There is still the possibility of Mr. Ratliff appealing the decision to the US Supreme Court. If this happens the case could drag on for several more months. As it stands now the US District Court will notify me when my Bond is waived and I of course, will notify you.

I am also under $250 bond to the Pike County court on the charge of flourishing a deadly weapon. This case is still pending.

I am advised that I cannot be ordered for induction while I have a court case pending. On Sept. 21 of this year you ordered me to report for induction on Oct. 16, 1967.

I request that you cancell that induction order.

Your action in drafting me while I have court cases pending causes me great concern. It also makes me question the fairness with which you are handling my case.

This is the second procedural error leading to an induction order that you have made in my case. I want to call to your attention that although some consider me to be a controversial person, I am still entitled to legal rights.

I am still working in Pike County and to stay here throughout the current dispute. Please note that my addres is Box 928, and not 356M.

Again, I request that you cancell my induction order and we will both await the decisions of the courts. Thank you.

For a free south,

(s) Joseph Mulloy
Joseph Mulloy

CC. State Director
Selective Service
Frankfort, Ky.

[Letter from State Director to Board
Dated October 9, 1967]

(Stamped)
Local Board No. 47
Jefferson County
OCT 10 1967
Louisville, Ky. 40203

STATE HEADQUARTERS FOR SELECTIVE SERVICE
COMMONWEALTH OF KENTUCKY
220 Steele Street
Frankfort, Ky. 40601

October 9, 1967

Selective Service
Local Board No. 47
Louisville, Ky.

Subject: Joseph Mulloy
SS No. 15-47-44-153

Dear Mr. Chairman and Board Members:

Attached is copy of letter from registrant which is self explanatory.

The order to report for induction should be canceled, and the registrant classified in Class IV-F so long as he is under the jurisdiction of the Court.

Sincerely,

For the State Director
(s) Henry L. Bethel, Jr.
Henry L. Bethel, Jr.
Lt. Colonel, AGC
Chief, Field Operations Division

Attachment

[Letter from Local Board to Joseph Thomas Mulloy Dated October 12, 1967]

October 12, 1967

Mr. Joseph Thomas Mulloy
Rt. 2 Box 356-M
Pikeville, Ky.

Dear Mr. Mulloy:

This letter cancels your order to report for Induction on October 16, 1967. Do not report. Since you are under the jurisdiction of the Court, you will be considered for a 4-F classification.

Yours truly,

Local Board 47

(Miss) M. Green
Clerk

[Letter from Joseph Thomas Mulloy to Local Board
Dated October 17, 1967]

Oct 17, 1967
Box 928 Rt. 2
Pikeville, Ky.

Selective Service System
Local Board No. 47
1405 W. Broadway
Louisville, Ky.

Dear Sir,

I am writing to formally request a conscientious objector application form. I wish to file a CO claim.

After much, much thinking, seeking, and questioning of my own religious upbringing and political experience I have concluded that I am a conscientious objector. I am therefore opposed to war in any form.

In my studies of history I have found a strong correlation between religious practices and political realities. In essence the two are almost interchangeable. The prevailing religious attitude of a certain age almost consistently justifies the politics of that age. And when the politics of men demand new conquests or an expansion of the economy the religion was tailored to the situation. I point out the Crusades, the settlement of the American West, and the Vietnam War as three easy examples. The Crusades were launched under the guise of returning the Holyland to the Christians; the atrocities committed in the West were done under the banner of "Manifest Destiny" with bible quoting missionaries leading the way; and the most inhumane of all wars, the one in Vietnam, is justified as a stand against godless communism.

When I was a small child I was taught that men should love their fellow man and Thou Shalt Not Kill. But a child is taught many things and few have any real significance or understanding until the child reaches adulthood. The adult begins to move about in the world testing his early lessons, discarding some, keeping others until with maturity he forms his personal beliefs.

My adult experience has caused me to test severely many of my early teaching. The gross injustices in society have caused me to question my own existence, the dishonesty and greed of the politicians in Eastern Kentucky have made me angry, and the horror's of war have thrilled me at the moves and privately made me shiver.

I have been taught, I have experienced, and I have decided I cannot, I wil not, participate in the injustices, the killings, and the wars. I will adhere to the basic teaching of Jesus and do everything I can to promote peace, understanding and Love. It is with these thought in mind that I request to be classified a conscientious objector.

For your interest I am still employed by the Appalachian Volunteers, Inc. Present projects include stopping strip mining, establishing a welfare rights organization, and research on absentee owned coal fields.

Also inclosed is a newspaper which will give you some background on the sedition charge along with literature on an anti-war demonstration which I am planning to attend.

Please send the CO form.

Sincerely,

Joseph T. Mulloy
15-47-44-153

[Letter from Carl Braden to Local Board
Dated October 20, 1967]

SOUTHERN CONFERENCE EDUCATIONAL FUND (SCEF)
3210 West Broadway
Louisville, Kentucky 40211

(Stamped)
Local Board No. 47
Jefferson County
OCT 23 1967
Louisville, Ky. 40203

Oct. 20, 1967

Selective Service System
Local Board No. 47
1405 W. Broadway
Louisville, Ky.

Dear Board Members:

It has come to my attention that Joseph Mulloy, 229 N. 37th St., who is registered with your board, has asked for classification as a conscientious objector.

I want to tell you what I know about this fine young man, in order to help you reach a decision as to his status.

Joe is a very conscientious young man who is working very hard to help bring about a better world for the poor people in the mountains of Kentucky.

He is dedicated to the proposition that such peaceful action is the way to solve our problems, and that war merely adds to our problems and makes them worse.

Joe has told me numerous times how he feels about this and I admire him greatly for his stand. It is good that he feels such responsibility to his fellow man that he is willing to devote his life to the movement for human freedom.

A person who feels as Joe does is certainly a conscientious objector to war as a means of settling differences. I feel sure that members of the board will find this to be true and therefore classify Joe Mulloy as a conscientious objector.

If you desire further information, please do not hestitate to call or write me.

Cordially yours,

(s) Carl Braden
Carl Braden,
Executive Director

CB:st

[Letters from State Board to "Judge" Ratliff and "U.S. 6th District Court" Dated October 24, 1967]

(Stamped)
Local Board No. 47
Jefferson County
OCT 25 1967
Louisville, Ky. 40203

STATE HEADQUARTERS FOR SELECTIVE SERVICE
COMMONWEALTH OF KENTUCKY
220 Steele Street
Frankfort, Ky. 40601

October 24, 1967

Judge Ratliff
Pike County Court
Pikeville, Kentucky

Subject: Joseph Thomas Mulloy
SS No. 15-47-44-153

Dear Sir:

Subject registrant states he is under a $250.00 bond to the Pike County Court on the charge of flourishing a deadly weapon. Please advise if case is still pending.

Mr. Mulloy is subject to induction into the Armed Forces of the United States, but cannot be inducted if he is under the jurisdiction of the Court.

Sincerely,

For the State Director
(s) H. L. B.
Henry L. Bethel, Jr.
Lt. Colonel, AGC
Chief, Field Operations Division

cc: L. B. 47

(Stamped)
Local Board No. 47
Jefferson County
OCT 25 1967
Louisville, Ky. 40203

STATE HEADQUARTERS FOR SELECTIVE SERVICE
COMMONWEALTH OF KENTUCKY
220 Steele Street
Frankfort, Ky. 40601

October 24, 1967

U. S. 6th District Court
Pikeville, Kentucky

Subject: Joseph Thomas Mulloy
SS No. 15-47-44-153

Dear Sir:

Please advise if subject registrant is still under the jurisdiction of the Court, or if he has been released.

Mr. Mulloy is subject to induction into the Armed Forces of the United States, but cannot be inducted if he is under the jurisdiction of the Court.

Sincerely,

For the State Director
Henry L. Bethel, Jr.
Lt. Colonel, AGC
Chief, Field Operations Division

cc: L. B. 47

[Letter from United States District Court to State Headquarters Dated October 26, 1967. Received by Local Board December 6, 1967]

UNITED STATES DISTRICT COURT
Eastern District of Kentucky
Office of the Clerk

(Stamped)
Local Board No. 47
Jefferson County
DEC 6 1967
Louisville, Ky. 40203

October 26, 1967

State Headquarters for Selective Service
Commonwealth of Kentucky
220 Steele Street
Frankfort, Kentucky 40601

Attn: Lt. Colonel Henry L. Bethel, Jr.
AGC Chief, Field Operations Division
Re: Joseph Thomas Mulloy
SS No. 15-47-44-153

Dear Sir:

The above named subject was recently a plaintiff in a civil action filed on our Pikeville docket. I have no information of his ever being a defendant in a matter in this Court either civil or criminal.

Very truly yours,
(s) Davis T. McGarvey
Davis T. McGarvey, Clerk
U.S. District Court

DTM:nca

This letter has been at Ky. St. SS Hdqts and just received by this Board (Bd 47) on Dec. 6, 1967,

(s) M. Green
Clerk
Witnessed by Mrs. F. Brown

[Letter from Joseph Thomas Mulloy to Local Board
Dated October 26, 1967]

(Stamped)
Local Board No. 47
Jefferson County
OCT 30 1967
Louisville, Ky. 40203

Oct. 26, 1967

Selective Service
Local Board No. 47
Louisville, Ky.

Dear Sir,

Just a few notes to bring you up to date.

1, My lawyer informs me that I am still under bond to the Federal Court in Lexington.

2, Enclosed is my CO application

3, I request a personal interview with my board to discuss my appalachian

thank you,

(s) Joseph Mulloy
Joseph Mulloy

[Letter from Local Board to Joseph Thomas Mulloy
Dated October 30, 1967]

October 30, 1967

Mr. Joseph Thomas Mulloy
Rt. 2 Box 928
Pikeville, Ky.

Your appeal rights and personal appearance time has lapsed. However the Board members are granting you a personal appearance, simply through courtesy. A Board meeting is to be held Thursday, Nov. 9, 1967 at 1:30 p.m.

Yours truly,

Local Board 47

(Miss) M. Green
Clerk

[Letter from Thorsten Horton to Local Board
Dated October 27, 1967]

October 27, 1967

Thorsten Horton

Box 2533
Pikeville, Kentucky

Kentucky Local Board Number 47
Selective Service System
1405 West Broadway
Louisville, Kentucky

Re: Mr. Joseph Mulloy, Box 928, Route No. 2, Pikeville, Kentucky

Dear Sir:

Mr. Mulloy has asked me to be a reference for his sincerity in requesting status as a conscientious objector.

I met Joe Mulloy in the Fall of 1966 in connection with developing a field study project in Southern Appalchia for college students. From this first meeting until the present time, including his experience in the courts involving sedition charges, I have observed in Joe Mulloy what I would call genuine Christian love and concern for the Christian brotherhood of Man. In my estimation, Joe could not have endured the persecution he received related to his court experience if he had not had faith in the goodness of Man.

In the recent encounter involving the Appalachian Group to Save the Land and People and the Puritan Coal Company,

Joe Mulloy demonstrated his belief in nonviolence by convincing members of the Appalachian Group to leave their arms at home, thus avoiding what could have been a terrible waste of human life.

Please feel free to write or call–(606) 432-3189.

I sincerely hope that you will honor his request.

Sincerely,

Thorsten Horton
Director of the Appalachian Field Study Center (A Project of the Union for Research and Experimentation in Higher Education)
Visiting Instructor at Pikeville Coll.

TH/mh

[Letter from William F. Browne (Rev.) to Local Board. Dated October 30 1967]

Saint Anthony's Church
Norton, Virginia 24273

St. Mary's Church
Coeburn, Virginia

St. Joseph's Church
Clintwood, Virginia

October 30, 1967

Local Board No. 47
1405 W. Broadway
Louisville, Kentucky

Re: 15-47-44-153

Dear Sirs:

This letter is a request on the behalf of Joseph T. Mulloy. I request that you consider his position that he finds participation in war as morally offensive to his conscience and therefore be granted a classification as a conscientious objector.

I am personally acquainted with Joseph T. Mulloy and can attest to his moral integrity and veracity. His personal conscience finds that participation in war is incompatible with his moral convictions, consequently, military service would do violence to his conscience.

The Catholic Church has always maintained that participation in a just war is morally defensible. However, moral

theologians and the Church, in particular, has always insisted that each individual must follow his own conscience. This is the basic moral principle in Catholic moral theology. Consequently, even in view of overwhelming approval in a given moral consideration the Church has always respected the convictions of the individual conscience.

In view of my personal association with Joseph T. Mulloy and our Church's defense of the inviolability of the individual's conscience, I request that you grant the registrant a draft classification as a conscientious objector.

If further clarification is necessary in this matter I will be happy to appear personally before your Board to answer any questions.

Respectfully yours,

(Rev.) William F. Browne

[Letter from Edith Easterling to Local Board Dated November 2, 1967]

(Stamped)
Local Board No. 47
Jefferson County
NOV 9 1967
Louisville, Ky. 40203

Nov. 2, 1967

Selective Service System

I have known Joe Mulloy for almost wo years. We have worked together in Pike County trying to bring democracy to Eastern Kentucky. We have had a hard struggle and it is, of course, not over yet. We have been called every thing and threatened but we believe in the power of the people and will continue. Joe Mulloy has played a very important part in helping us with our rights and to get organized. He would be impossible to replace if he were to have to leave here.

I have also talked often with him concerning the acts of violence in this country and know him to be a peaceful man. He has always encouraged us that we must organize peacefully. When the buldozers were about to strip Jink Ray's land Joe cautioned the use of non-violence. The usual way of settleing things here is with a shot gun but this time the peaceful way worked. He has demonstrated the sincereity of his belief to us.

I hope that you defer Joe so that he can continue to work here in the war for democracy.

Yours,

(s) Edith Easterling
Edith Easterling
Field Director for Pike County
Appalachian Volunteers, Inc.
Box 356 M Rt. 2
Pikeville, Ky.

[Letter from Robert Joseph Mulloy to Local Board
Dated November 7, 1967]

(Stamped)
Local Board No. 47
Jefferson County
NOV 9 1967
Louisville, Ky. 40203

November 7, 1967

Selective Service
Local Board # 47
1405 West Broadway
Louisville, Kentucky

Subject: Joseph T. Mulloy

Gentlemen:

I am writing this letter in behalf of my brother, Joseph T. Mulloy.

It is my understanding that Joseph T. Mulloy has requested, of Local Board #47, a draft classification referred to as conscientious objector.

Insofar as I am a veteran of the Korean War, and vehemently disagree with my brother's unwillingness to bear arms for his country, it should be noted, however, that I believe my brother to be sincere concerning his feelings and he has maintained this position for a number of years.

Respectfully yours,

(s) Robert J. Mulloy
Robert J. Mulloy
6104 Oaknoll Drive
Louisville, Kentucky 40219

(Stamped)
Local Board No. 47
Jefferson County
NOV 9 1967
Louisville, Ky. 40203

6104 Oaknoll Dr.
Lou. Ky. 40219
10-24-67

Dear Joe:

I have been thinking about you and thought I would write.

Joe, we are certainly proud of you concerning your attempts to correct certain social injustices in Pike County.

Also, we are pleased with the outcome of the alleged sedition charge.

Mom was telling me that you are considering the possibility of being classified as a conscientious objector with regard to your draft status.

Joe, I wish you wouldn't take this approach to your military obligation. I see no reason why you should not bear arms for your country. If we all believed the same way you do, and refused to bear arms, our country would have long ago been lost to another and less free form of government.

I am sure you could recite many valid arguments to the contrary, but nevertheless, you have certain obligations to your country, and of equal importance, to your family.

I would not be reluctant to say that I, for one, would be most embarrassed if you insisted on not being inducted.

Give Karen my regards.

Bob

[Personal Appearance Meeting Dated November 9, 1967]

M-40

Registrant:

Joseph Thomas Mulloy SS Number: 15-47-44-153

RECORD OF PERSONAL APPEARANCE

1. Was written Request for Appearance filed? Yes
2. Date of Local Board Meeting Nov. 9, 1967
3. Names of board members present:
   Mr. J. A. Sherman Mr. Frank Wolking
   Mr. Robert Downs
4. Names; Identification of parties appearing:
   Joseph Thomas Mulloy
5. Requesting change in classification from to until
6. Was written information filed? Yes.
*7. Following is a concise summary of oral information as reported by parties appearing:

Mr. Mulloy was granted a courtesy personal appearance, since his time for personal appeal and appearance had expired.

Registrant sworn in.

Registrant advised that he was claiming a C.O. classification because he had learned through experience and did not until later in life realize the importance of now believing as he did. He felt that military service would interupt his work and there would be no one else to take his place.

He is under bond as long as his appeal time is running.

Miss Green to write to Judge Monyhand U.S. . . District Co., Lexington Ky. to find out about appeal and bond. Until such time as a reply is received the Members would not

consider him as a C.O.

I certify that the information shown in Item 7 above was submitted verbally by the person(s) listed in Item 4.
This 9 day of November, 1967.

(s) M. Green
Clerk, Local Board No.

*Reverse side of sheet or additional sheet of plain paper may be used to complete summary, if needed.

[Letter from Joseph Thomas Mulloy to Local Board
Dated November 12, 1967]

Nov. 12, 1967

Selective Service
Local Board No. 47
Louisville, Ky.

Dear Sir:

I have been thinking about the short interview I had with you all last week. It doesn't seem to me that all the points were covered that should have been and that I was not able to fully express my position of conscience.

These are certainly troubled times in this country. There are millions of black people and poor white people who have never had a say about any thing they are beginning to organize. They are beginning to organize for freedom and equality, the two great principles of the Bill of Rights. But this struggle is hitting head on the capitalist ruling class that has disregarded our Constitution for the profit motive. I believe that another revolution is beginning to take place in this country, that this country's government can no longer deal with its internal problems.

I of course hope that this revolution takes a non-violent form. It is important that men begin now to understand each other. That is why I hope that you understand me. You have me over the barrel, so to speak, in that you have the law behind you. But I remind you that I am an organizer. That I have dedicated my life to change and to the constant struggle that is democracy. There is nothing that can stop me

from organizing against something I don't believe.

This brings us to the war in Vietnam and my draft situation. I do not question individual integrety or your right by law to do what you do. I do however believe that every citizen has the duty of dissent, even resistance, regarding acts which violate his conscience.

I told you I felt that I was serving my country's needs here in Pike County. That was no frivolous statement. The problems are too great to be ignored any longer and no one should be sent to another country as long as we are in the mess we are in. Since I believe my country's course to be wrong in Vietnam, I feel that I would be serving my country's best interest, now and in the future generations, to follow my conscience.

I feel that you are going to try to draft me anyway, regardless of my feelings. I have not made up my mind as yet. If I decided to go into the Army I will of course do everything in my power to teach my fellow soldiers the truth about Vietnam and Non-violent principles. I will actively organize resistance. If I choose not to go into the Army I will resist induction and make the biggest stink about it possible. I must do this to bear witness to my beliefs and to cause my fellow citizens to think.

I know that I will eventually face prison. I am not afraid of that. Greater men than I have pulled time for practicing what they believe. When Emerson visited Thoreau in jail for not paying taxes to the Mexican War he asked "What are you doing in there?" Thoreau answered "What are you doing out there?"

It is a sad time but what must be must be. Before now I have not done any draft organizing. I have restricted myself to work with the dispossessed coal miners of Appalachia. But I believe it to be the same battle.

I submit this to you representing the government with all due respect,

Sincerely,

Joseph Mulloy

[Letter from Joseph Thomas Mulloy to Local Board Dated December 2, 1967]

(Stamped)
Local Board No. 47
Jefferson County
DEC 4 1967
Louisville, Ky. 40203

Dec. 2, 1967
Box 928 Rt. 2
Pikeville, Ky.

Selective Service
Local Board # 47
Louisville, Ky.

Dear Sir:

This is to inform you that I am no longer employed by the Appalachian Volunteers. I was fired today for stating that I am a C O and would refuse induction if ordered.

I feel very bad about being fired but a person must have the conviction of his beliefs. Please consider this as a public demonstration of my C O convictions.

As far as I know I am still under bond to the Federal Court.

I am anxiously awaiting your decision on my case.

Sincerely,

(s) Joseph Mulloy

[Letter from Joseph Thomas Mulloy to Local Board Dated January 3, 1968]

(Stamped)
Local Board No. 47
Jefferson County
JAN 4 1968
Louisville, Ky. 40203

Jan 3, 1968
1301 Cherokee Rd.
Louisville, Ky.

Selective Service
Local Board # 47
Louisville, Ky.

Dear Sir,

This is to inform you of my new address noted above.

I am now employed by the Southern Conference Educational Fund in Louisville. My work includes developing educational materials for bringing the poor and the middle class to a better understanding of the issues that affect their lives. This includes an understanding of local taxes, open housing laws, redistribution of the wealth and U. S. domestic and foreign policy.

I'm also working on a book about my experiences with the Poverty War in Appalachia.

Charges of "sedition" have been dropped against me and the bond have been released. I am unsure if the Pike County peace bond has been dropped, but suspect that it has since I no longer live there. I am still awaiting word from my lawyer on that charge.

Sincerely,

(s) Joseph Mulloy
Joseph Mulloy

[Letter from Local Board to Joseph Thomas Mulloy Dated January 19, 1968]

January 19, 1968

Mr. Joseph Thomas Mulloy
1301 Cherokee Rd.
Louisville, Ky.

Mr. Mulloy:

The members reviewed your file at a meeting Jan. 11, 1968 and they felt that the information in your file did not warrant a re-opening of your classification.

Yours truly,
Local Board 47

_____

(Miss) M. Green
Clerk

[Letter from Joseph Thomas Mulloy to Local Board Dated January 21, 1968]

Jan. 21, 1968
1301 Cherokee Rd.
Louisville, Ky.

Selective Service
Local Board No. 47
1405 W. Broadway
Louisville, Ky.

Clerk:

I appeal your failure to reclassify me I-0, I consider the interview in November a re-opening of my case.

Please forward this appeal to the proper level.

Sincerely,

Joseph Mulloy

cc: State Director
Selective Service
Frankfort, Ky.

[Letter from Local Board to Joseph Thomas Mulloy
Dated January 23, 1968]

January 23, 1968

Mr. Joseph Mulloy
1301 Cherokee Road
Louisville, Ky.

Dear Mr. Mulloy:

The personal appearance that the Board Members granted you was a courtesy personal appearance, since your time for granting a personal appearance and appeal had lapsed. The Board Members do not consider this a re-opening of your case.

Yours truly,
Local Board 47

_____
(Miss) M. Green
Clerk

[Transcript of Proceedings, Mulloy v. Selective Service Local Board No. 47, et al., February 16, 1968]

TESTIMONY OF J. ALLEN SHERMAN

[26]

MR. J. ALLEN SHERMAN, called as a witness by the plaintiff as if on cross examination, after first being duly sworn, testified as follows, to-wit:

CROSS EXAMINATION BY MR. ROBERT A. SEDLER

* * * * * * *

[28]

MR. SEDLER: Mr. SHERMAN, you are Chairman of Local Board 47?

MR. SHERMAN: That's right.

* * * * * * *

[38]

Q. Now, on this—this hearing, courtesy interview, was held November 9th, lasted about ten to fifteen minutes, is that correct?

A. It didn't last so very long, no, sir.

Q. And what action was taken by the Board at the conclusion of the hearing?

A. The hearing—we had Mr. Mulloy come in and we asked

him to express himself as to what reasons he had and what he had written out before he came in. We read over his file. We read over his forms that were in the file as far as we could. Then we had him come in

[39]

and express himself. The Board members then asked some questions of him, as I remember it. It's pretty far back, and it's not transcribed or taken down. And then, at the conclusion of it, I always ask them if there is anything additional that they care to add. And I'm sure I asked that of Mr. Mulloy and he went outside.

We then had him sit down and wait, I believe–I'm not certain about that; it's generally the procedure, though–and we discussed his case in there at that time and came to the conclusion that there wasn't any merit to his contention of the–

Q. (Interrupting) Conscientious Objector Status?

A. (Continuing)–Conscientious Objector Status that he was seeking.

Q. How many–

A. (Interrupting) His principal statement to us in there was in relation to his work and the importance of his work in the mountains of Eastern Kentucky.

Q. Let's see if we can't recall that interview a little more fully.

A. Miss Green generally makes some notes on the interview.

[40]

Q. Well, I have some questions that I would like to ask you–

A. (Interrupting) Yes, sir.

Q. (Continuing)–if these were questions that were asked.

Was Mr. Mulloy asked, "How did you develop your conscientious objector beliefs?"

A. I don't know what you are reading from. But I don't

know—wouldn't remember any particular or specific question that was asked at that time.

Q. Do you recall that the question—a question was asked, generally, such as, "Why didn't you file for Conscientious Objector Status earlier"? Do you recall Mr. Mulloy having been asked that?

A. No, sir. I don't recall no specific questions.

* * * * * *

[41]

Q. Was a question—do you recall a tenor of a question asked, "Aren't you just filing to get out of the draft"?

A. I don't recall any specific question. But I'm certain that is never asked and wasn't asked on this occasion, either.

Q. Okay. Was he—do you recall the question being asked, "Do you feel any obligation to your country"?

A. No. I'm sure that that wasn't asked. It's never asked. And, while I don't recall any specific question, I will say that—a question of that sort or that type or that inference is never asked of any registrant.

Q. At that time—how much time did the Board give to consider Mr. Mulloy's claim at that time, the November 9th, how much consideration was given?

A. I don't know whether you mean deliberation after Mr. Mulloy left the room—

Q. (Interrupting) Yeah; after he left. After he left.

A. I would say it wasn't a great length of time. We all were familiar with his file, had looked it

[42]

over before he came in, had listened to him to see if he had any merit, or any difference, or changed his position. Principally it was the same deal, that he was seeking occupational deferment from what his testimony was—

Q. (Interrupting) Your conclusion was then and was now—

A. (Interrupting) If you will let me finish–

Q. (Interrupting) And you–

A. (Interrupting) I'll tell you that the time that it took wasn't very long. No more than eight or ten minutes, I would say.

Q. Just about–just about ten minutes on the evening of November 11th?

A. Well, I believe it was the 9th.

Q. Ninth; I'm sorry.

A. I don't remember. But whatever evening it was.

Q. Ten minutes on the evening of November 9. And at that time–at that time was a decision made as to whether or not this would be accepted?

A. What would be accepted?

Q. In other words, was a decision made on November 9th as to whether or not the Board would reopen

[43]

the classification? Did you make a decision that night?

A. That's right, that there was no justification, that it was the same argument that he'd made before on his occupational deferment and he didn't have any conscientious objection statement that we felt would merit a consideration.

Q. So, you made a decision on November 9th?

A. The Board made a decision.

* * * * * * *

[44]

Q. Was Mr. Mulloy notified of your decision, as required by law?

A. I couldn't answer that, when he was notified other than what the record shows. Miss Green handles the notification.

Q. The record shows some very interesting things.

The record shows that on January 11, 1968, the following information:

"All information in file was considered, including claim of conscientious objector. All members

[45]

present felt this information did not—did not warrant reopening of 1-A classification."

Would you tell me if a—since a final decision was made, so you say on November 9th why was the matter further considered at the meeting of January 11?

A. I don't know that it was further considered. That may have been the date it culminated. Actually, at the time of his hearing, I don't know now whether he was under indictment or not. If he was, then the appeal time had not as yet run and we understood from the Regulations that nothing, no action could be taken in the order of induction of a registrant so long as he's either under indictment or the appeal time has not elapsed or for anyone to appeal the case.

* * * * * * *

RECROSS EXAMINATION

* * * * * * *

[63]

Q. You said that the hearing was directed toward understanding what Mr. Mulloy was claiming, is that correct?

A. The type of hearing, the courtesy hearing, we gave Mr. Mulloy was an opportunity to come in and explain his position as to what his position was, what he was trying to do and how he arrived at it.

Q. Was his position not sufficiently stated in the completed SS Form 150?

A. It didn't—Mr. Mulloy asked for a

[64]

personal hearing, which we told him we'd be glad to talk to him. He wasn't entitled to it under the Act, but we'd be glad to have him come in and try to explain his position or elaborate on it, which is what he wanted. When he came in, the whole time, as I remember, he was talking was about his job—was about his job, his occupation, the work he was doing.

Q. Is it your position that the statements that Mr. Mulloy made in SS Form 150 and the statements that he made on the interview and the supporting letters that were sent, even if true, would not justify a reopening of his classification?

A. Taking everything that he—he did not make out—his claim was principally on his job, the work he was doing, and that was what he was attempting to do at the time he was down there personally.

Now, I went over his 150 Form. What's in it, now, I couldn't tell you. I don't know. And I don't know what's in the other registrants' file. His claim, taking everything, assuming everything that he said down there at that time to be so, he still did not make out a case for a conscientious objection and, therefore, we saw no reason to reopen the case, because it wasn't there.

[65]

Q. Then you based—then are you saying that you based your decision not to reopen on the testimony he gave at the oral interview rather than the answers he gave on SSS Form 150?

A. We try to base all our decisions on all the information available, including the file and what he says.

Q. Is it your position, then, that on all the information available, that is, his testimony at the hearing, SS Form 150 and whatever other information you had in his file, he did not make out a prima—a case for Conscientious Objector Status?

A. I didn't follow you on your whole question.

Q. Is it your position that on all the information that you have, that is, his testimony at the hearing, his answers on SS Form 150 and other information in his file, this did not make out a case that he was entitled to a deferment?

A. Well, I think the file speaks for itself. The action taken is the conclusion we came to, and it was based on all the information we had, what he had furnished to us, the letters he had sent in with his 150 Form and the information that he had given when he appeared in person.

Q. And that all of this, even if true, would not have entitled him to have his classification reopened?

[66]

A. All the information that we had, we came to the conclusion as we recorded on the file.

Q. Thank you. That's all.

A. Yes, sir.

(WITNESS EXCUSED)

[Transcript of Proceedings, U.S. v. Joseph Thomas Mulloy, April 5, 1968]

TESTIMONY OF MRS. MARGARET GREEN

[38]

MRS. MARGARET GREEN, called as a witness by the plaintiff, having been first duly sworn, was examined and testified as follows, to wit:

* * * * * * *

CROSS EXAMINATION BY MR. SEDLER

* * * * * * *

[52]

Q. Now, when a registrant is classified as 1-0, that is, Conscientious Objector, he receives does he not, an order to report for civilian work; is that correct?

A. After certain procedures.

BY THE COURT: Well, what are these procedures; do you recall?

[53]

THE WITNESS: Well, he must appear before the Board and it is necessary for us to have a representative from our State Headquarters and he is offered various kinds of jobs such as working in various hospitals and we send the registrant this list and he makes his selection and then we send it back to Headquarters.

Q. So that a registrant who is classified as 1-0 then has a

special proceeding before the Board?

A. That's right.

Q. At which time he then receives an order to report for civilian work?

A. That's right.

Q. Do you recall any such proceedings with–

A. (Interrupting) I have never had one in my Board.

Q. You have never had one in your Board?

A. (Witness shook in the negative.)

Q. Where a registrant was ordered to report for civilian work?

A. No, I have not.

MR. SEDLER: Thank you; no further questions.

* * * * * * *

TESTIMONY OF ROBERT T. DOWNES

[92]

MR. ROBERT T. DOWNES, called as a witness, by the defendant, having been first duly sworn, was examined and testified as follows, to wit:

DIRECT EXAMINATION BY MR. SEDLER

* * * * * * *

[94]

Q. At the time, or I should say prior to the time of the meeting, this was the first time that you were aware of Mr. Mulloy?

A. I had never met him.

Q. You had never met him. Were you aware that he was a registrant of your Board?

A. No.

Q. No. Prior to the meeting did you read his file, his Selective Service file?

A. The file is available before he presented himself, yes.

Q. And you read it?

A. I scanned it because I am the newest member on this particular Board and I was not familiar with what was in his file at all.

Q. You weren't. You just scanned the file then?

A. (Witness nodded his head in the affirmative.)

Q. When a registrant claims classification as a Conscientious Objector he must complete SS Form 150, must he not?

[95]

A. I believe this is the procedure, yes, sir.

Q. Do you know if, when you went through Mr. Mulloy's file, did you find that he had completed the SS Form 150?

A. I couldn't say.

Q. You don't remember that?

A. No, because as I recall his file was fairly thick.

Q. Fairly thick.

A. And I'm not familiar with the various forms by the particular numbers.

Q. Well, you knew though that applicants for Conscientious Objector status must complete a special form; is that correct?

A. Yes.

Q. Did you read, then, the form that he had filled out, his form for classification, as a Conscientious Objector?

A. I don't remember.

[96]

Q. During the time that you have been a member of the

Board do you recall how many requests for Conscientious Objection status have been made before the Board?

A. Except in a general way, there have been very few.

Q. Have you—do you recall any of these requests having been granted?

[97]

A. A change in status?

Q. No, given the status of a Conscientious Objector, a 1-O classification?

A. I don't recall of any.

Q. You don't recall of any of that being—any of that being done?

A. No.

Q. Do you recall the interview with Mr. Mulloy on November 9th?

A. Yes, I remember that he did appear before the Board.

Q. He did appear. You don't remember if you had read his file before he appeared?

A. I did not read each sheet in his file; the file was there.

Q. You don't remember if you read his answers to the form required by conscientious objectors; is that right?

A. That's correct.

Q. Did you feel that you could make a judgment without having read thoroughly his answers to the form?

A. There was no judgment required at this particular time.

[98]

Q. Oh, so that no judgment was made on November 9th; is that correct?

A. No, I—you asked if I had read the file before he appeared.

Q. Oh, well, you did read it that evening while he was—

A. (Interrupting) No, at the time the Board met the file was there and there were several members of the Board present at this particular time and the clerk had informed us that we had a person who had requested to appear before the Board.

Q. So, this was the first time you knew of this?

A. Knew of what?

Q. That Mr. Mulloy was trying to be claiming status as a Conscientious Objector?

A. Yes, and—

Q. (Interrupting) And—I'm sorry; continue.

A. And at that time, the clerk said that the individual was waiting—was there, and all of the Board members, I believe, or those who cared to looked in the file, but as far as reading each separate sheet is concerned, I don't believe that I did this.

[99]

Q. We are not concerned about each special sheet. I am concerned about what we call the SS Form 150 which is the special form for Conscientious Objectors that all applicants for this status must complete. You don't recall reading that?

A. Not specifically.

Q. Not specifically. How long did the interview last with Mr. Mulloy that evening; do you recall?

A. It's a fairly short time.

Q. About ten mintes?

A. I'd say ten, fifteen minutes, something like that; something in that neighborhood.

Q. Ten, fifteen minutes; and did you ask Mr. Mulloy any questions at that time?

A. As I recall, Mr. Mulloy did all of the talking.

Q. Mr. Mulloy did all of the talking and you didn't ask him any questions?

A. No, I don't recall that I did.

* * * * * * *

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Q. Very well; you were aware Mr. Mulloy was seeking to be classified as a Conscientious Objector; is that correct?

A. On the basis of what he submitted to the Board when he

appeared before us.

Q. Yes, and you understand—you are thoroughly familiar with the law—let's say with the regulations governing the classification of Conscientious Objectors?

A. I can't say that I'm thoroughly familiar. As indicated to you before, I am perhaps the youngest person on the particular Board. I don't know whether this pertains in this

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case or not, but ordinarily when the meets we go through whatever the cases are that are before us, what is presented, and then we act on this but I could not quote to you in terms of—

Q. (Interrupting) I don't mean to quote; I would just like a general—if you have a general understanding of what a conscientious objector is and the policy of your draft Board concerning conscientious objectors?

A. In a general sense, yes.

Q. Would you tell us what this is?

A. Well, it is my understanding that if a person declares that he is a conscientious objector that rather than going into the military he could serve in some other capacity.

Q. Well, the draft Board has to make that decision, doesn't it? He can't do it just on his own.

A. The draft Board, I thought now, was involved primarily with determining the availability of people.

Q. So that you don't think it was the draft Board's responsibility to determine whether a man is—

A. (Interrupting) Well, this is—

BY THE COURT: (Interrupting) Just a moment now, gentlemen. We are beginning to get away from it now. You have a perfect right now, of course, to prove by any draft Board member that he acted arbitrarily or capriciously or unfairly.

Now, the Court cannot allow you to cross examine a draft Board member on the contents of the law or its application. So, please confine your questions.

MR. SEDLER: Very well, Your Honor.

[107]

Q. Had you, prior to the January 11th meeting, read Mr. Mulloy's file thoroughly?

A. No.

Q. Had you, prior to that time, read the answers that he gave to the Selective Service form for Conscientious Objectors?

A. As I mentioned earlier, I cannot specifically state that I read all of the forms in his file.

Q. I didn't ask for all of the forms. I asked for crucial forms.

A. I'm trying to recall what possibly is on this particular form. As I said before, I do not remember the specifics of the form that you are questioning me about.

Q. Would it be helpful if I were to give

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you a copy or if we were to see the copy of that form in the record?

A. It might be.

MR. SEDLER: Can we agree to let him see the copy in the record?

MR. HUDDLESTON: Certainly; I believe the Judge has the file.

Q. Now, I show you this part marked as an appendix to the special form for Conscientious Objectors.

MR. HUDDLESTON: Your Honor, we ask that the witness be allowed to see the whole form and not just the—

BY THE COURT: (Interrupting) Yes, the witness may see anything he would like to see.

MR. SEDLER: The file is right there for the witness.

THE WITNESS: I remember reading this.

Q. You do remember reading it?

A. Yes.

Q. Do you also recall—well, let me put it this way; you

would say that after you finished reading that you concluded that this did not warrant then

[109]

a reopening of the classification?

A. I feel certain that this was one of the things that prompted me to feel this way.

* * * * * * *

Q. How much time would you say that you spent reviewing Mr. Mulloy's file prior to the January 11th meeting?

A. I don't know; the only—

Q. (Interrupting) Ten minutes?

A. The only time that I would have had an occasion to

[110]

even consider the file would have been during one of the Board meetings or before the meeting started.

Q. Before the meetings; in other words, you wouldn't take it home and study it carefully?

A. No.

Q. Now, you are prepared to state under oath, that you feel that you gave full and fair consideration to his claim; is that correct?

A. I believe so, on the basis of what was discussed, what we were able to glean from his own statements.

* * * * * * *

TESTIMONY OF FRANK J. WOLKING

[122]

MR. FRANK J. WOLKING, called as a witness, by the defendant, having been first duly sworn, was examined and testified as follows, to-wit:

DIRECT EXAMINATION BY MR. SEDLER

* * * * * * *

[123]

Q. Prior to the meeting of November 9th did you go through his file?

A. If his file came up I went through his file, but I wouldn't recall having specifically gone through his file.

Q. You wouldn't recall. Well, you knew his case was coming up?

A. I knew his—I knew he was coming to visit, coming to the Board for a hearing.

Q. Did you know that he had requested a reopening of his classification so that his claim for Conscientious Objector status could be considered?

A. I knew that Mrs. Green, the Board's secretary, had told us that he had asked for a courtesy hearing and it wasn't a regular hearing, but he wanted to come and make some statements and that's all I knew.

Q. So, you did not know at that time that he was acting for Conscientious Objector classification?

A. No.

Q. Then you did not go, prior to the hearing, read

thoroughly his responses to the SS Form 150?

[124]

A. I would say I absolutely did, but I wouldn't recall having done it.

Q. But if you did—

A. (Interrupting) If his case came before the Board I would have read whatever was in the Form 150.

Q. The Selective Service Form 150?

A. That's right.

Q. And your conclusion after reading—how much time did you spend on that form, would you estimate?

A. I wouldn't recall that.

Q. Your conclusion after reading that form was that this did not entitle him to a reopening of his classification?

A. That is correct.

Q. How long did the interview last at that time?

A. I wouldn't recall that either; possibly ten or fifteen minutes.

Q. About ten or fifteen minutes; and what questions—do you recall what questions you asked Mr. Mulloy that evening?

A. No, I don't think that I asked him any questions and I don't remember any.

Q. You don't think you asked him any questions?

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A. I don't think I did.

Q. Do you recall any members of the Board asking him any questions?

A. No, I don't.

Q. Well, you mean that the meeting just started and he sat down and he said his piece for ten minutes and he left?

A. It is possible that some of the Board asked him questions, but I don't remember them.

Q. You don't recall any of the questions. Do you recall the substance of what Mr. Mulloy had stated that evening of November 9th?

A. The only recollection I have is that he stated that he felt like his work in Appalachia was very important and was at least important to him and he felt like he should be made a Conscientious Objector or should have Conscientious Objector status because of that, and that was all I—

Q. (Interrupting) Oh, in other words, you're saying that he was asking for an occupation deferment, a 2-A classification?

A. That's right.

Q. Oh, I see. In other words, he was not

[126]

then asking for a 1-0 classification?

A. I don't know what he was asking for or don't recall what he was asking for. The record will show what he was asking for, but I recall that that was his appeal; it was based on his work in Appalachia.

* * * * * * *

Q. And that he had not been convicted of any offense and at that meeting you reconsidered the case; is that correct?

A. I don't say we reconsidered the case. We just considered his—his statement that he had made when he came and asked for this when we had this hearing.

Q. Also you considered those statements at the meeting of the 9th, but the meeting of the 11th where you—or did you consider it at both times?

A. I would say, of course, we considered them at the meeting of the 9th because he made his statements then. You couldn't help if you were listening to a man making an appeal, you couldn't help considering it while you were there.

Q. But you did not make a decision on the 9th?

A. I don't remember whether we actually did or did not on the 9th.

Q. But the minutes show that the final decision was made on the 11th.

A. Then that is correct.

Q. And you are then prepared to state

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under oath that you feel that you gave full and fair consideration to his claim?

A. Oh, yes.

Q. And that everything he said and all of the evidence he produced even if true, would not entitle him to the classification that he claimed?

A. That is the way I felt and that is the way I voted.

MR. SEDLER: No further questions.

CROSS EXAMINATION

BY MR. HUDDLESTON:

Q. As I understand it then, you did not inquire into his sincerety [sic], but the prima facie case that he presented?

A. That is quite true.

Q. Assuming that he was sincere?

A. We assumed he was sincere, that's right.

Q. You stated that he talked about or based his claim on the importance of his work in Appalachia?

A. That is the impression I have or that is the impression I remember.

[130]

Q. He was asking for a Conscientious Objector status because he had important work in East Kentucky?

A. That's right.

* * * * * *

REDIRECT EXAMINATION BY MR. SEDLER

* * * * * *

[136]

Q. Now, if an individual makes this statement and the Board agrees with him, that is, it finds as a fact that he is by reason of his religious training and belief conscientiously opposed to participation in war in any form and further, conscientiously opposed to participation in noncombatant training and service in the Armed Forces, what happens?

A. How do you mean what happens?

Q. What classification does he get?

A. Well, if the Board doesn't consider this he stays in this 1-A.

Q. Now, if the Board considers it favorably, what classification does he get? If the Board considered Mr. Mulloy's claim favorably, what classification would he have been given?

A. (No response)

Q. Well, what classification would he be given?

A. I believe I'm correct in stating that he would be offered a position in some hospital or some work that would permit him to serve in some other manner.

Q. Right, so that by signing this statement then Mr. Mulloy would have indicated his willingness to perform civilian

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service in the national interest?

A. Well, I believe it says he wouldn't, doesn't it? Isn't that correct?

A. I therefore claim exemption from both combatant and noncombatant training and service in the Armed Forces.

Q. Right, and you say that if he is exempt from noncom-

batant and combatant services from the Armed Forces he spends two years working in a hospital or something, right?

A. I think sometimes they are offered that.

Q. In other words, you don't think the law requires that of one who is given a C.O. status, in other words you—you think—in other words, you thought that if you granted Mr. Mulloy his claimed classification that he would have avoided the national service entirely; is that correct?

MR. HUDDLESTON: Your Honor, I don't believe that this is—

BY THE COURT: (Interrupting) I'll sustain that.

[138]

Q. Was it your understanding that—is it your understanding that a conscientious objector must perform two years of service in the national interest?

A. The only thing I can say in this case is that I didn't believe that he sould [sic] be granted a Conscientious Objector status. That is what I believed and that is the way I voted. We didn't vote on anything else.

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THE WITNESS: I mean everything that was in the Form 150 and everything he said, in other words, everything was taken into consideration in the record and that's what my decision was based on.

Q. And that even—in other words, you did not question his sincerity, I take it?

A. That is correct.

Q. You believed his sincerity—you believed that everything he said, even if true, would not entitle him to be a conscientious objector?

A. Everything that was in the record and what he said.

* * * * * *

TESTIMONY OF ROBERT H. RICKERT

[141]

MR. ROBERT H. RICKERT, called as a witness, by the defendant, having been first duly sworn, was examined and testified as follows, to wit:

DIRECT EXAMINATION BY MR. SEDLER

* * * * * *

Q. When did you first become aware that Mr. Mulloy was registered before your Board?

A. When he was registered.

Q. Yes. When did you identify—when did you know that a fellow named Mulloy was a registrant before you?

A. Possibly it was called to my attention on the 11th, the second meeting, in January.

Q. Oh, then you were not at the meeting of November 9th when Mr. Mulloy was—

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A. (Interrupting) I was not at that meeting.

Q. Did you discuss the action at the meeting of November 9th with any members of the Board or with the clerk?

A. Only at meeting on January—in January.

Q. So that you were not aware prior to January 9th that Mr. Mulloy's case was going to come up that evening[sic]?

A. No.

Q. Oh, then you had not read his responses to the SS Form 150?

A. No.

Q. I see. Well, the record of minutes shows that at that meeting, the meeting of January 9th [sic] the Board voted four to nothing that his classification—that his classification should not be reopened, did you not at that time?

A. Yes.

Q. Well, how could you vote if you hadn't read his file?

[143]

A. I read his file at that day and I reviewed the case with the other members of the Board.

Q. I'm sorry; you read his file at what date, sir?

A. In January. I think it was the 11th.

Q. Oh, then you did read the file at the meeting or before the meeting?

A. Before the meeting.

Q. How much time did you spend on it?

A. Enough time to read it; I don't know.

Q. You don't recall. Do you recall that he did complete the SS Form 150?

A. I do.

Q. And you weren't at all troubled about voting on this even though you hadn't been present at the meeting of November 9th when he made a personal appearance?

A. No.

Q. Were you—in other words, it is fair to say that your decision was, in part, influenced by the views of the other members of the Board as to what he said that evening?

A. And reviewing the file, yes.

* * * * * *

[145]

REDIRECT EXAMINATION BY MR. SEDLER

Q. Let me ask you an additional question; you have stated that you had no personal feelings against Mr. Mulloy?

A. Right.

Q. Did you have any feelings against Mr. Mulloy due to the fact that he had asked for classification as a Conscientious Objector?

A. No, no more than any of the rest of the registrants who had asked for that.

Q. You say other registrants have asked for it?

A. At times, at different times, yes.

Q. Do you recall the last time that a registrant asked for that classification?

A. No, no.

Q. You do not?

A. No.

Q. Do you recall in your tenure of service that the Board has given anyone a classification as a Conscientious Objector?

A. Yes.

Q. But you don't recall the name of that individual?

A. No.

Q. And that—but this was done and this person was ordered to perform civilian work?

A. Yes.

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TESTIMONY OF J. ALLEN SHERMAN

[167]

MR. J. ALLEN SHERMAN, called as a witness, by the

defendant, having been first duly sworn, was examined and testified as follows, to wit:

DIRECT EXAMINATION BY MR. SEDLER

* * * * * * *

[169]

Q. You have been on the Board since 1948?

A. Approximately.

Q. During that time—strike that.

Let me ask you this; what is your understanding of a conscientious objector?

A. My understanding of a conscientious objector—it's pretty much spelled out in the regulations, I believe, and my understanding of it would be one who has conscientious scruples against taking another person's life even under any circumstances.

Q. Does participation in war in any form—

A. (Interrupting) That's correct.

Q. Now, there is another classification is there not also, a class 1-A-0 opposed to the participation in combat, but will so perform noncombatant service?

MR. HUDDLESTON: Objection, this is inquiry into the law itself which is not a jury question.

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BY THE COURT: Well, I will let Mr. Sherman answer it if he can.

THE WITNESS: Repeat the question, please.

Q. The question is, I mean is there also not a classification of 1-A-0 where the person is opposed to participation in combat, but is willing to perform noncombatant military service?

A. I'm not certain about that, whether there is a special classification or not. I don't mean—I know many of them do perform that sort of a service within the Army themselves. Now, whether this is a classification for it under Selective Service or whether that is designated by the Army, I wouldn't be certain about that.

Q. But Mr. Mulloy did not ask for that; he indicated he was opposed to participation in war in any form.

A. That's correct, as I recall it.

Q. When a registrant is classified as a Conscientious Objector, opposed to participation in war in any form, what happens? What disposition is made of that if you would have granted the classification to Mr. Mulloy that he sought?

A. As a Conscientious Objector?

[171]

Q. Yes.

A. He'd be classified as a 1-A-0 classification. He would be given an opportunity to serve in some institution of his choosing for a period of, I believe it is two years which he would have the choice of making an institution within a given group.

Q. You testified that you have read—you had read Mr. Mulloy's file prior to the meeting of November 9th?

A. I reviewed his file at that meeting.

Q. At that meeting; you had not considered it prior to the meeting?

A. Well, I am sure his file came up for consideration on other matters prior to that time.

Q. Not his claim for Conscientious Objector status?

A. No, sir; that came up at that time. We looked it over before he came in as we do anybody else.

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[Order Granting Certiorari]

(Title Omitted in Printing)

Facts and opinion, 412 F.2d 421.

Jan. 19, 1970. Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit granted and case placed on the summary calendar.